

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES  
INTERNATIONAL COMPETITIVE MULTI-SERVICE  
COMMERCIAL CONTRACTS

Docket No. MC2020-252

COMPETITIVE PRODUCT PRICES  
INTERNATIONAL COMPETITIVE MULTI-SERVICE  
COMMERCIAL CONTRACTS 1 (MC2020-252)

Docket No. CP2020-282

**REQUEST OF THE UNITED STATES POSTAL SERVICE TO ADD  
INTERNATIONAL COMPETITIVE MULTI-SERVICE COMMERCIAL CONTRACTS 1  
TO THE COMPETITIVE PRODUCTS LIST AND  
APPLICATION FOR NON-PUBLIC TREATMENT OF MATERIALS  
FILED UNDER SEAL  
(September 18, 2020)**

In accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3040.130 through § 3040.135, the United States Postal Service (Postal Service) hereby requests that the International Competitive Multi-Service Commercial Contracts 1 product be added to the competitive product list within the Mail Classification Schedule (MCS), and that the streamlined filing process concerning this new product that is described in this cover notice be implemented.

***I. Introduction***

Since the passage of the Postal Accountability and Enhancement Act of 2006 (PAEA), the Postal Service has filed a number of requests to establish particular types of outbound and inbound international negotiated service agreements (NSAs), which are currently listed in section 2500 of the MCS.<sup>1</sup> At present, the outbound international

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<sup>1</sup> See PRC, (Draft) Mail Classification Schedule, posted January 26, 2020 (with revisions through July 1, 2020), available at <http://www.prc.gov/mail-classification-schedule>, MCS section 2510 concerns

negotiated service agreements that are currently in effect are in the following MCS sections:

- 2510.7 Global Reseller Expedited Package Contracts
- 2510.8 Global Expedited Package Services (GEPS)—Non-Published Rates
- 2510.15 Priority Mail Express International [PMEI], Priority Mail International [PMI] & First-Class Package International Service [FCPIS] Contracts
- 2510.16 PMEI, PMI, FCPIS & Commercial ePacket [CeP] Contracts
- 2510.17 PMEI, PMI & FCPIS Contracts
- 2510.18 International Priority Airmail [IPA], CeP, PMEI, PMI & FCPIS Contracts
- 2510.19 IPA, CeP, PMEI, PMI & FCPIS with Reseller Contracts
- 2510.20 IPA Contracts
- 2510.21 IPA, International Surface Air Lift [ISAL], CeP, PMEI, PMI & FCPIS with Reseller Contracts

The products included within the MCS sections listed above are familiar to the Postal Regulatory Commission (Commission or PRC) and the Public Representatives who have been appointed to review contracts in the MCS sections listed above, because of the large number of outbound negotiated service agreements that have been added to the competitive products list of the MCS since 2006.<sup>2</sup> This process has been in place for many years. Very few outbound international negotiated service agreements have merited any type of further review within the dockets in which they were filed, and none of the international contracts actually executed with counterparty customers have been remanded by the Commission.

Prior to the Commission's experience with international negotiated service agreements for competitive products, and GEPS contracts products<sup>3</sup> in particular, as

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Outbound International Negotiated Service Agreements and MCS section 2515 concerns Inbound International Negotiated Service Agreements.

<sup>2</sup> See PRC Annual Compliance Determination Report, Fiscal Year 2019 [FY 2019 ACD], Docket No. ACR2019, March 25, 2020, at 80.

<sup>3</sup> See MCS section 2510.3, Global Expedited Package Services (GEPS) Contracts.

well as prior to the Commission's experience with the GEPS – Non-Published Rates (GEPS – NPR) product,<sup>4</sup> the Commission determined in Order No. 43 that each such agreement would be considered a separate “product.”<sup>5</sup> The Commission noted, however, that products considered to be functionally equivalent to one another could be grouped together.<sup>6</sup> Consistent with the Commission's regulations, the Postal Service has filed various requests to add outbound international negotiated service agreements to the competitive product list.

In Order No. 43, the Commission acknowledged that commenters concerning the proposed rules about negotiated service agreements raised legitimate concerns that the process for adding these agreements to the competitive products list should not be overly cumbersome,<sup>7</sup> but the Commission lacked experience at that time with competitive agreements and, in particular, with international customized mail agreements.<sup>8</sup> The Commission advised that with greater experience, it might be appropriate to group functionally equivalent negotiated service agreements as a single product, if it could be shown that the agreements shared the same market and cost characteristics.<sup>9</sup> The Commission also acknowledged that although its regulations for competitive rate-setting attempt to strike a balance among the divergent interests of mailers, modifications to the rules might be necessary as experience with them is gained.<sup>10</sup>

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<sup>4</sup> See MCS section 2510.8, Global Expedited Package Services (GEPS)—Non-Published Rates.

<sup>5</sup> PRC Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, Docket No. RM2007-1, October 29, 2007, at 57.

<sup>6</sup> *Id.* at 58.

<sup>7</sup> *Id.* at 62.

<sup>8</sup> *Id.* at 57, n.22.

<sup>9</sup> *Id.* at 58.

<sup>10</sup> *Id.* at 56.

In this context, the Postal Service developed the GEPS – NPR product, which is complementary to the original GEPS product. The Postal Service has filed 15 iterations of GEPS – NPR with the Commission. The GEPS – NPR product provides business rules to ensure that the specific, potential rates set forth in a standard GEPS –NPR contract template are established and previously reviewed by the Commission. Those rules also ensure that such GEPS – NPR agreements will, as a product, comply with all statutory and regulatory requirements for cost-coverage and contribution to institutional costs and that they will not be subsidized by market-dominant products.

Through this notice, the Postal Service is proposing the creation of the International Competitive Multi-Service Commercial Contracts 1 product, which is complementary to the previously established outbound international negotiated service agreement products listed above that currently appear in the MCS. The International Competitive Multi-Service Commercial Contracts 1 product establishes filing conventions and practices to eliminate unnecessary and repetitive workload, which would expedite the processing of the numerous customized outbound international negotiated service agreements that the Postal Service anticipates entering into in the near future. This new product is also designed to ensure that the contracts within the product grouping will comply with all statutory and regulatory requirements for cost-coverage and contribution to institutional costs and will not be subsidized by market-dominant products.

The main objective of this request is to file almost all customized outbound international negotiated service agreements with customers within the International Competitive Multi-Service Commercial Contracts 1 product. In other words all

customized outbound international negotiated service agreements other than contracts filed within the GEPS – NPR product would be filed within the product that is the subject of this request. This new product grouping would be designed for customized agreements that do not lend themselves to consideration as candidates for the GEPS—NPR product.<sup>11</sup> A more detailed description of the International Competitive Multi-Service Commercial Contracts 1 product follows in section III below.

In support of this Notice, the Postal Service is filing the following attachments:

- Attachment 1, an application for non-public treatment of materials filed under seal, which would be applicable to all outbound international negotiated service agreements subsequently filed in the CP docket of this request;
- Attachment 2, a redacted version of Governors' Decision No. 19-1,<sup>12</sup> which authorizes management to prepare any necessary product description of certain nonpublished competitive services, including text for inclusion in the MCS, and to present such matter for review by the Commission;<sup>13</sup>
- Attachment 3, proposed revisions to the Mail Classification Schedule, to add the International Competitive Multi-Service Commercial

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<sup>11</sup> The Postal Service intends to continue the use of the "NPR" approach for its contract customers that lend themselves to using standardized terms, who are generally smaller volume customers that do not have a need for customization of terms.

<sup>12</sup> An unredacted version of Governors' Decision No. 19-1 is being filed separately under seal with the Commission.

<sup>13</sup> Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (Governors' Decision No. 19-1), February 7, 2019.

Contracts 1 product to the Mail Classification Schedule,<sup>14</sup> including a list, known as a “menu” of existing services currently listed in the MCS that would be included in various permutations in agreements filed within the International Competitive Multi-Service Commercial Contracts 1 product;

- Attachment 4, a document that sets forth the current procedures for filing an outbound international negotiated service agreement in a single MC and single CP docket, as well as proposed, streamlined procedures for outbound international negotiated service agreements to be filed in the International Competitive Multi-Service Commercial Contracts 1 product;
- Attachment 5, an unsigned template for the certified statement that would be included in filings of outbound international negotiated service agreements within the International Competitive Multi-Service Commercial Contracts 1 product, as required by 39 C.F.R. § 3035.105(c)(2); and
- Attachment 6, a Statement of Supporting Justification of Frank Cebello, Manager, International Products & Major Accounts, filed pursuant to 39 C.F.R. § 3040.132.

## ***II. Overview of Challenges Posed by Current Processes for Outbound International Negotiated Service Agreements***

The current process for adding outbound international service agreements to the competitive products list is overly cumbersome. Based on the Commission’s and the

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<sup>14</sup> See PRC, (Draft) Mail Classification Schedule, posted January 26, 2020 (with revisions through July 1, 2020), available at <http://www.prc.gov/mail-classification-schedule>.

Postal Service's experience gained from processing various outbound international negotiated service agreements since the passage of the PAEA, a streamlining of the current process of adding outbound international negotiated service agreements to the competitive products list is long overdue. All outbound international negotiated service agreements filings require the execution of similar tasks that must be completed before an agreement is filed at the PRC. Some of those tasks, which include the drafting, preparation and redaction of certain documents, could be simplified and even eliminated if the current process is streamlined.

#### ***A. Repetitive Tasks***

To complete a filing of an outbound international negotiated service agreement in the MCS sections 2510.15 through 2510.21 listed above in Section I of this request currently requires obtaining new MC and CP docket numbers from the PRC Dockets section, and completing a public filing that includes

- a cover pleading,
- a redacted version of Governors' Decision 19-1,
- a redacted version of the agreement,
- revisions to the MCS,
- a Statement of Supporting Justification,
- a certification,
- application for non-public treatment, and
- redacted financial workpapers.

In addition, the accompanying non-public filing includes a cover page, Governors' Decision No. 19-1, and financial workpapers. As outlined below, if the Commission

issues a favorable order in response to this request, thereby including the International Competitive Multi-Service Commercial Contract product in the competitive product list and setting forth the procedural schedule for contracts filed within that product, the filing of each outbound international negotiated service agreement within the International Competitive Multi-Service Commercial Contract product would only include:

- a cover pleading,
- a redacted version of the agreement,
- a certification, and
- redacted financial workpapers.

This would eliminate the need to file

- Governors' Decision No. 19-1,
- revisions to the MCS,
- a Statement of Supporting Justification, and
- an application for non-public treatment

with each negotiated service agreement filed within the International Competitive Multi-Service Commercial Contract product, unless changes were necessary for any of those four documents.

Similarly, the non-public filing of each outbound international negotiated service agreement within the International Competitive Multi-Service Commercial Contract product would only include:

- a cover page
- unredacted version of the agreement, and
- unredacted financial workpapers,



eliminating the need to file an unredacted version of Governors' Decision No. 19-1 with every contract filing.

***B. Sequential, Numbered Docketing System***

Currently, in order to file an outbound international negotiated service agreement in MCS sections 2510.15 through 2510.21 listed above in Section I of this request, the Commission's sequential, numbered docketing system requires the Postal Service to contact the PRC Dockets section to request an MC and a CP docket number for each agreement being filed. The Postal Service is then required to file initial pleadings in newly assigned docket numbers in sequential order on a daily basis. This process can create complications because if the designated filer is ready to file an agreement in certain dockets, but those assigned docket numbers are after a preceding docket number that has not been filed yet and is at risk of not being filed that same day, then the designated filer must either wait for the other filer to complete his or her filing in the preceding docket number or contact the Dockets section to ascertain the name of the other filer who has been assigned the preceding docket number, contact that filer to exchange docket numbers, and then call the PRC Dockets section again to furnish notice that the filers have exchanged docket numbers. If docket numbers are exchanged, the designated filer, prior to filing, then has to revise all references to docket numbers in the filing so that they refer to the re-assigned docket numbers. In a similar vein, if a single filer is filing multiple agreements in different assigned dockets on the same day, at the end of the day, there can be no sequential gap in the new docket numbers used for filings that day. Otherwise, the dockets section will be unable to post any of the pleadings that concern docket numbers subsequent to a docket number for

which a filing has not yet occurred. Thus, if a complication with any particular planned filing in a new docket arises during the course of the day, and the references to docket numbers in some filings cannot be renumbered in time to avoid a sequential gap in the docket numbers used for filings that day, certain agreements may not be filed that day. This process thus considerably complicates the filing of multiple agreements on a single day. If a gap in the sequence of assigned docket numbers used for a particular day occurs, then the PRC's docketing system is disrupted, and all of the agreements that have assigned docket numbers after the gap cannot be filed until the unused docket number that is causing the gap has been used. This can result in filings being completed one business day later than they might have occurred. If the Commission responds to this request by establishing that all subsequent customized international agreements to be filed within the International Competitive Multi-Service Commercial Contracts 1 product are to be filed in the CP-designated docket in which this request is filed, that would streamline the process. This would promote efficiency because multiple agreements could be filed under a single docket designation, without concern for sequential numbering. Thus, the filing of such agreements would not be held up simply because of the difficulties described above in meeting the Commission's requirements under the current docket assignment system in which agreements are filed using separate docket numbers that must be used in sequence on a daily basis.

In addition, more streamlining could be achieved in relation to the current practice of filing each agreement with a new competitive product (CP) and a new mail classification (MC) designation, as is done for outbound international negotiated service agreements in MCS sections 2510.15 through 2510.21 listed above in Section I of this

request. Currently, the Commission issues a new CP docket number for every such filing of an outbound international service agreement that is added to the competitive products list, and, with the exception of functionally equivalent negotiated service agreements, an MC docket number is issued because each such newly filed agreement represents a potential change to the MCS. This results in a cluttered daily listing on prc.gov, and extra time spent by the Commission, Postal Service, and industry observers' attorneys determining which CP docket is linked to a corresponding MC docket. This can result in the materials filed concerning a single agreement being reviewed twice, rather than just once. If the streamlined process set forth in this request is implemented, MC docket numbers would only be included in filings when material MCS changes are needed in connection with the International Competitive Multi-Service Commercial Contracts 1 product. This, in turn, would save time for all stakeholders and Commission staff. Participants and Commission staff who routinely monitor the prc.gov daily listing would have fewer dockets and repetitive filings to search through, saving them time by not having to review the same documents filed in multiple dockets. In sum, the solution proposed in the instant pleading reduces duplication by diminishing the number of new MC and CP dockets that need to be assigned to contracts filed within the International Competitive Multi-Service Commercial Contracts product, thereby stemming unnecessary time that is spent viewing duplicate entries on the Commission's daily listing.

The Postal Service proposes simplifying the sequential, numbered docketing system by assigning a serial number to each contract filed in the International Competitive Multi-Service Commercial Contracts 1 product, similar to the serial

numbers assigned to GEPS-NPR contracts. Doing so would enable the Postal Service to avoid the complexities posed by the Commission's docket numbering process, thereby promoting greater predictability and speed to market.

### ***C. Speed to Market***

The Postal Service envisions a more streamlined review process for filings of contracts in the International Competitive Multi-Service Commercial Contracts 1 product that would eliminate steps in the Commission's current review procedures for Requests to add outbound international negotiated service agreements to MCS sections 2510.15 through 2510.21 listed above in Section I of this request. This streamlining would allow for a reduced period of time within which the Commission could decide, through a negative option process, whether to perform additional review or allow a contract to take effect. These measures, in turn, could greatly accelerate speed to market for contracts. From a customer-focused perspective, speed to market is extremely important because the parties to the contract receive the benefit of greater predictability concerning when an agreement may go into effect, which would greatly enhance the Postal Service's ability to offer innovative and useful products in the marketplace that satisfy customer needs. Moreover, such measures would enhance the Postal Service's ability to earn revenue more quickly from new customers, and thereby provide much needed earnings sooner.

### ***III. Procedures to be Followed Concerning the International Competitive Multi-Service Commercial Contracts 1 Product***

If the Commission responds favorably to this request and establishes the MCS section for the proposed product, as well as issues an order setting forth the streamlined procedures set forth in this request, any agreement subsequently filed for

inclusion in the International Competitive Multi-Service Commercial Contracts 1 product would not require any additional action from the Commission, unless the Commission decides that further review is needed through a negative option process. This streamlined process, which is explained more thoroughly below, would focus the Commission's attention and conserve Commission resources by eliminating redundancies and repetitive tasks, such as the assignment and management of MC and CP dockets for each contract, as well as the preparation and review of initial scheduling orders, routine Public Representative (PR) comments, and a Commission order concerning each agreement.

The first two columns in Attachment 4 of this filing list many of the current tasks related to the process of adding an outbound international negotiated service agreement to the products in MCS sections 2510.15 through 2510.21 listed above in Section I of this request, and who completes each task. The third column of Attachment 4 includes an assessment of the extent to which each of the current tasks might be eliminated or simplified were the Commission to favorably review this request.

Included in the proposed revisions to the MCS in Attachment 3 of this filing is a list (menu) of existing services that are currently included in the competitive product list, most of which have been included in international outbound negotiated service agreements for several years. The services include the following:

- Global Express Guaranteed,
- Priority Mail Express International,
- Priority Mail International,
- First-Class Package International Service,

- International Priority Airmail (IPA)
- International Surface Air Lift (ISAL)
- Commercial ePacket (CeP)
- Destination Country Duty and Taxes Chargeback Service.

The Postal Service would offer to customers agreements for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product that concern one or a combination of the eight services in the menu listed above, as well as for the customer to serve as a reseller for any of the services in the menu listed above.

The Postal Service, through subsequent filings, would be able to revise the above menu of services. In order to do so, the Postal Service would complete a filing using the MC docket number designation of this filing to amend the menu. In response to such filings, the Commission would issue an order in the same MC docket concerning the requested classification change.

Under the CP docket designation of this filing, the Postal Service would file customized agreements that include any permutation of the services listed in the menu above. The public portion of each filing would include redacted versions of each agreement included in the filing, a certification concerning each agreement included in the filing, and redacted financial workpapers for each agreement included in the filing. If necessary, an update to the application for non-public treatment would also be filed. The non-public filing would include a cover page, as well as an unredacted copy of the agreement and unredacted copy of the financial workpapers. A serial number would be assigned to each International Competitive Multi-Service Commercial contract filed.

The Public Representative would be appointed in the Commission's order concerning this request or in a subsequent order. The Public Representative would have the opportunity, but not be required, to prepare and file comments within the prescribed time set forth in the procedural portion of the order issued in response to this request. Routine comments by the Public Representative would be eliminated, and the Public Representative would file comments only when the Public Representative had specific non-routine comments to offer.

International Competitive Multi-Service Commercial contracts could go into effect after a prescribed number of days elapsed. The Commission, through a negative option process set forth in the order concerning this request, could decline to take action on each particular contract in question. The Postal Service suggests that the Commission begin with a five business day turnaround and then through progressive experience, bring that figure down to three business days. The Postal Service submits that the Commission is capable of achieving this objective, especially if the Commission is freed from the obligations of

- preparing and reviewing an initial scheduling notice,
- the preparation and filing of routine Public Representative comments, and
- preparing and reviewing an order

concerning each agreement.

In fiscal year 2020 (FY 2020), there are examples of international negotiated service agreements filed in MC and CP dockets for which the Commission completed its review in eight or nine business days after the initial filing.<sup>15</sup>

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<sup>15</sup> See, *for example*, Docket Nos. MC2020-164 and CP2020-187, MC2020-165 and CP2020-188, MC2020-170 and CP2020-193, and MC2020-173 and CP2020-197.

A five business day turnaround would be reasonable because the Commission staff would not be spending time handling post-filing administrative tasks, such as issuing scheduling orders in routine cases, securing their publication in the *Federal Register*, or preparing a final order for each agreement. Thus, with numerous tasks eliminated, the Commission should be able to turn around a decision on whether a contract should be prevented from taking effect in a shortened period of time. Such responsiveness not only serves the interests of administrative economy and efficiency, but also positions the Postal Service to more promptly earn revenue from each contract, enhancing the predictability and attractiveness of Postal Service NSAs from the perspective of customers. The Commission could of course undertake further review, and prevent any given contract filed in the docket from taking effect after the prescribed period has concluded, if the Commission seeks to conduct further inquiries or wishes to opine on the legal sufficiency of the filing or the contract terms. Every International Competitive Multi-Service Commercial Contract would accommodate this possibility by continuing to include a “conditions precedent” clause to cover the contingency that the PRC could decide to prolong its review, or even not favorably review the contract altogether.

The Postal Service respectfully submits that based on its and the Commission's experience with the precursor outbound international negotiated service agreement products, the International Multi-Service Commercial Contract 1 product would provide the appropriate balance between the need for speed to market and predictability, with the Commission's need to ensure compliance with statutory pricing criteria.

#### ***IV. International Competitive Multi-Service Commercial Contracts 1 Product Description***



Prices and classifications not of general applicability for the International Competitive Multi-Service Commercial Contracts 1 product were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classification for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (Governors' Decision No. 19-1).

The Postal Service is requesting in this filing to establish not only the International Competitive Multi-Service Commercial Contracts 1 product but also the related filing and review processes set forth in this request. Consequently, pursuant to 39 C.F.R. § 3035.105 and in accordance with the procedures set forth in 39 U.S.C. § 3642 and 39 C.F.R. § 3040.130, the Postal Service seeks to add International Competitive Multi-Service Commercial Contracts 1 product to the competitive product list as a new product.

Section 3632(b) of Title 39 of the U.S. Code provides that:

(3) Rates or classes not of general applicability. In the case of rates or classes not of general applicability in the Nation as a whole or in any substantial region of the Nation, the Governors shall cause each rate and class decision under this section and the record of the proceedings in connection with such decision to be filed with the Postal Regulatory Commission by such date before the effective date of any new rates or classes as the Governors consider appropriate, but in no case less than 15 days.

The Postal Service submits that the Commission would be acting consistently with applicable statutory authority in allowing contracts filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product to become effective if the Commission takes no action. First, the CP docket assigned to this filing

is being noticed in the *Federal Register* well before any contracts will be presented to the Commission in this docket and at least 15 days before any contract could become effective. Further, with respect to each individual contract to be filed with streamlined filing procedures as proposed in this docket, nothing prevents the Commission from expediting its review, as it has done so in the current fiscal year.<sup>16</sup> As long as the Postal Service files an agreement at least 15 days prior to its effectiveness, the requirements of 39 U.S.C. § 3632 would be satisfied. All such contracts would satisfy this requirement as they would include conditions precedent clauses to accommodate the possibility of extended or even unfavorable review by the Commission.

More than ten years has passed since Order No. 43 was issued. Those ten years provide more than a sufficient number of examples of the processing of outbound international competitive negotiated service agreements under the PAEA to provide a sound basis for revisiting some aspects of Order No. 43, evaluating the extent to which existing processes concerning the review of outbound international negotiated service agreements are appropriate, and for evaluating whether existing processes strike a reasonable balance that fosters pricing flexibility, transparency, and accountability.

The existing processes, while they emphasize transparency and accountability, do not foster speed to market and predictability because of the current lengthy, overly cumbersome process for adding international negotiated service agreements to the competitive product list. As discussed in this request, numerous tasks in this process could be simplified or eliminated.

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<sup>16</sup> See, for example, Docket Nos. MC2020-164 and CP2020-187, MC2020-165 and CP2020-188, MC2020-170 and CP2020-193, and MC2020-173 and CP2020-197.

Of specific concern is the number of days between when an outbound international negotiated service agreement is filed at the Commission and when the Commission completes its review. As set forth in Attachment 4, implementation of the procedures set forth in this request would result in simpler filings that would reduce the amount of time that the Postal Service spends preparing each agreement for review by the Commission, as well as the time the Commission spends reviewing each agreement.

- The Postal Service's initial filing of each International Competitive Multi-Service Commercial contract in the CP docket in which this request is filed would not include a redacted and unredacted version of the applicable Governors' Decision, draft MCS text, a Statement of Supporting Justification, and an application for non-public treatment. The Governors' Decision, draft MCS text, Statement of Supporting Justification and application for non-public treatment included in this request would be considered sufficient, unless changes are actually needed.
- The Postal Service would not need to obtain MC and CP docket numbers from the PRC Dockets section for each agreement because each agreement would be filed in the CP docket that this request is filed in. As a result, additional complications associated with sequential numbering of docket would no longer arise.
- The Commission and the Postal Service would not need to publish a *Federal Register* notice concerning each agreement because the

*Federal Register* notices published concerning this request would be considered sufficient.

- The Commission and Public Representative's review could be accelerated because the Postal Service's initial filing would be much simpler, consisting of just a brief notice, redacted and redacted versions of the agreement, certification, and financial workpapers.
- Because each agreement would not be filed in separate MC and CP dockets, the Commission would not have to issue a notice initiating the dockets. In the order concerning this request, the Commission could appoint a Public Representative or Public Representatives and set forth the timetable for the review of contracts filed in this docket.
- In that same order, the Commission could state that the Public Representative should file comments within the time limit prescribed only if the Public Representative's comments were more than of a routine nature.
- Similarly, in that order, the Commission could state that each International Competitive Multi-Service Commercial contract would go into effect a certain number of days after an agreement was filed, unless the Commission issues an order affirmatively adjusting that procedural schedule or the Postal Service files a notice of revised effective date.

**V. *Benefits of Adding the International Competitive Multi-Service Commercial Contracts 1 Product to the MCS***

Implementation of the procedures set forth in this request would be advantageous in a number of respects.

The Postal Service would be able to place customized outbound international NSAs into effect more rapidly at a reduced cost. The Commission previously noted that “the transaction costs of negotiating and approving short-term Negotiated Service Agreements potentially limit their usefulness, and thus might limit such agreements.”<sup>17</sup> Further the Commission suggested that:

[i]f the Postal Service were to anticipate a great interest in any particular short-term Negotiated Service Agreement, consideration could be given to reformulating the agreement as a niche classification. This potentially will reduce overall transaction costs, (sic) and implement the service in a shorter period of time.<sup>18</sup>

Experience with the current outbound international negotiated service agreement products listed on page 2 of this request has shown that they are very popular agreements for businesses with a need to ship items internationally. The number of outbound international negotiated service agreements has grown substantially in recent years,<sup>19</sup> and the number of renewing customers is substantial. Because the agreements typically have a one-year term, the transaction costs for developing the pricing and filing each agreement as a separate product are substantial as well. The Commission’s resources are also affected by these agreements, as the Commission

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<sup>17</sup> PRC Order No. 1391, Order Establishing Rules Applicable to Requests for Baseline and Functionally Equivalent Negotiated Service Agreements, Docket No. RM2003-5, February 11, 2004, at p.55, n.27.

<sup>18</sup> *Id.*

<sup>19</sup> For example, in the FY2019 Annual Compliance Determination, the Commission stated that the Postal Service provided volume, revenue and cost data “for 793 international NSAs, 785 of which include negotiated rates for outbound mail.” FY 2019 Annual Compliance Determination, Docket No. ACR2019, March 25, 2020, at 80. In contrast, the FY2012 Annual Compliance Determination mentions “362 outbound international contracts.” FY 2012 Annual Compliance Determination, Docket No. ACR2012, March 28, 2013, at 167.

and a Public Representative must review each agreement, its rates, and related financial workpapers.

If this request is favorably received by the Commission, filing procedures for outbound international negotiated service agreements would be simplified. The new process would provide both the Postal Service and the Commission the means to decrease administrative costs and burdens associated with the current outbound international negotiated service agreement review process. Because the Postal Service revenues fund both organizations, savings to either organization result in overall savings for the Postal Service.

The complexity of filings related to each outbound international negotiated service agreement would be reduced, through the elimination, to the extent possible, of the need to include the same or very similar documents over and over again in such filings, such as the applicable Governors' Decision, the Statement of Supporting Justification, and the application for non-public treatment. Streamlined proceedings created by the Commission's order concerning this request, as discussed above, would also reduce the time spent by the Postal Service monitoring the Commission's review of each agreement and would, in general, allow for outbound international negotiated service agreements to be put into effect much sooner after filing at the Commission.

The Postal Service would be better able to serve customers by being able to place agreements into effect more rapidly, as a result of streamlining the regulatory review of each individual contract. This would allow the USPS to more quickly capture revenue from customers mailing under customized agreements.

The Public Representative's task would be simplified because a higher percentage of the content of each filing to be reviewed concerning outbound international negotiated service agreements would specifically concern the specific contract(s) to be reviewed.

In addition, the Commission would be relieved of the burden of issuing numerous routine notices of filing and orders concerning outbound international negotiated service agreements and arranging for their publication in the *Federal Register*, allowing the Commission to focus on those contracts that in the judgment of the Commission require greater scrutiny.

The Postal Service's customers would benefit from the enhanced predictability and increased speed to market for outbound international negotiated service agreements that would result from the implementation of this request.

## **VI. Conclusion**

This docket presents the Commission, the Postal Service, its customers, and the public with a groundbreaking opportunity to streamline procedures, eliminate unnecessary work, and focus priorities on matters that truly require the Commission's attention.

For the reasons discussed above, the Postal Service respectfully requests that the Commission add the International Competitive Multi-Service Commercial Contracts 1 product to the competitive products list of the MCS and adopt the streamlined procedures described herein. The Postal Service respectfully asks that the Commission consider concluding this docket as soon as possible, so that the new processes can begin being measured as a baseline for FY 2021.

Respectfully submitted,

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September 18, 2020



## **APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3011, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the unredacted Governors' Decision included with this filing. In addition, the Postal Service also hereby applies for non-public treatment of the following that may be filed subsequently in the CP Docket number for this filing, Docket No. CP2020-282:

- any unredacted contract filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product that includes any permutation of the services and features set forth in the draft Mail Classification Schedule (MCS) section included as Attachment 3 of this filing;<sup>1</sup> as well as

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<sup>1</sup> Attachment 3 of this filing states as follows [underlining removed].

These contracts provide incentives to the contractholder as mailer for any combination of:

- Global Express Guaranteed (GXG)(2315),
- Priority Mail Express International (PMEI) (2305),
- Outbound Priority Mail International (PMI) (2315),
- Outbound Single-Piece First-Class Package International Service (FCPIS)(2335),
- International Priority Airmail (IPA)(2320),
- International Surface Air Lift (ISAL)(2325),
- Commercial ePacket (CeP), or
- Destination Country Duty and Taxes Chargeback Service.

CeP is a commercial service designed for volume shipments of outbound international letter post packet items (destined for delivery to certain destinations outside of the United States). Individual item tracking is provided. CeP pieces are sealed against inspection and shall not be opened except as authorized by law. CeP pieces that are undeliverable-as-addressed are entitled to be forwarded or returned to the sender. Size and weight limitations for CeP are the same as for International Priority Airmail Packages (Small Packets) and Rolls (2320.2).

For certain destinations for which the Postal Service has made arrangements with the destination country postal operator or supplier, as an optional feature, the Postal Service may offer destination country duty and taxes chargeback service, through which custom duties and taxes are paid by the mailer in lieu of the recipient.

In addition to offering these contracts directly to contract holders for the contract holder's volume, these contracts may also provide incentives to the contract holder as reseller for PMEI (2305), PMI (2315), and/or FCPIS (2335). The contract holder as reseller offers prices based on its

- any unredacted financial workpapers and related supporting documentation concerning such contracts, establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3035.105.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3011.201(b), as enumerated below.

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.

**(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.**

The materials designated as non-public consist of information of a commercial nature, which under good business practice would not be publicly disclosed. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4).<sup>2</sup> Because the portions of materials filed and to be filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support the Postal Service's determination that these materials are exempt from public disclosure and grant the Postal Service's application for their non-public treatment.

Information of a commercial nature, which under good business practice would

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contract to its customers (reseller's customers), which may include some specific criteria for payment, preparation, and tender.

<sup>2</sup> In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g) (3) (A).

not be publicly disclosed, as well as third party business information, are not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).<sup>3</sup> Because the portions of materials filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

**(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.<sup>4</sup>**

In the case of each unredacted contract filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product, the Postal Service believes

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<sup>3</sup> The Commission has indicated that “likely commercial injury” should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

<sup>4</sup> Section 3011.201(b)(2) further states the following:

(i) If the submitter has a proprietary interest in the information contained within the materials, identification of an individual designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the Materials.

(ii) If any person other than the submitter has a proprietary interest in the information contained within the materials, identification of each person who is known to have a proprietary interest in the information. If such an identification is sensitive or impracticable, an explanation shall be provided along with the identification of an individual designated by the submitter to provide notice to each affected person.

(iii) If both the submitter and any person other than the submitter have a proprietary interest in the information contained within the non-public materials, identification in accordance with both paragraphs (b)(2)(i) and (ii) of this section shall be provided. The submitter may designate the same individual to fulfill the requirements of paragraphs (b)(2)(i) and (ii) of this section.

that the parties with a proprietary interest in the materials would be the counterparty to the contract, the PC Postage Provider(s) (if the contract allows for and the customer intends to use a PC Postage Provider), and foreign postal operators.

The Postal Service believes that the customer with whom the contract is made has a proprietary interest in the non-public materials and customer-identifying information should be withheld from public disclosure. Therefore, in compliance with 39 C.F.R. § 3011.200(b), rather than identifying the customer, the Postal Service gives notice that it has already informed the customer,<sup>5</sup> and the PC Postage Provider (if applicable),<sup>6</sup> that have a proprietary interest in the materials for the contract that is the subject of this docket of the nature and scope of this filing and their ability to address their confidentiality concerns directly with the Commission.

The Postal Service employee responsible for providing notice to the customer with proprietary interest in the materials filed in this docket is Ms. Amy E. Douvlos, Marketing Specialist, Global Business, United States Postal Service, 475 L'Enfant Plaza, SW, Room 5427, Washington, DC 20260-4017, whose email address is Amy.E.Douvlos@usps.gov, and whose telephone number is 202-268-3777.

As for foreign postal operators, the Postal Service recently provided notice to all foreign postal operators within the Universal Postal Union network through an International Bureau Circular issued on December 9, 2019, that the Postal Service will be regularly submitting certain business information to the Commission. Some UPU-

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<sup>5</sup> The Postal Service informs the customer for such a contract prior to filing a notice that the Postal Service will be seeking non-public treatment of the redacted portions of the contract. The Postal Service also informs the customer for the contract that it could file its own application for non-public treatment of these materials in accordance with 39 C.F.R. § 3011.204.

<sup>6</sup> The Postal Service has provided a blanket notice to PC Postage Providers in light of the fact that these filings are fairly routine. To the extent required, the Postal Service seeks a waiver from having to provide each PC Postage Provider notice of this docket.

designated foreign postal operators may have a proprietary interest in such information. The circular includes information on how third parties may address any confidentiality concerns with the Commission. In addition, contact information for all UPU Designated Operators is available at the following link, which is incorporated by reference into the instant application: [http://pls.upu.int/pls/ap/addr\\_public.display\\_addr?p\\_language=AN](http://pls.upu.int/pls/ap/addr_public.display_addr?p_language=AN).<sup>7</sup>

**(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public.**

The Governors' Decision establishing International Competitive contracts the contract identifying the customer and containing the prices, terms, and conditions of the contract, and the financial workpapers supporting the contract is being filed under seal in this docket. In addition, the Postal Service plans to subsequently file in the CP Docket number for this filing under seal, unredacted copies of contracts for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product as well as financial workpapers supporting each contract. A redacted copy of the Governors' Decision is being filed publicly in this docket. The Postal Service maintains that the redacted portions of the Governors' Decision, the redacted portions of each contract (including the name of the customer for each contract) filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product, and the redacted portions of related information should remain confidential.

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<sup>7</sup> To the extent required, the Postal Service seeks a waiver from having to provide each foreign postal operator notice of this docket. It is impractical to communicate with dozens of operators in multiple languages about this matter. Moreover, the volume of contracts would overwhelm both the Postal Service and the applicable foreign postal operators with boilerplate notices.

The redacted portions of the Governors' Decision and attached Analysis protect the costs authorizing International Competitive contracts, and the analysis of those costs.

With regard to each contract filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product in the CP docket of this filing, the name, address, signature block, and other information that could identify the customer of each contract will be redacted, because such identifying information of a postal patron may be withheld from mandatory public disclosure by virtue of 39 U.S.C. § 504(g)(1) and 39 U.S.C. § 410(c). The additional redactions to each agreement will protect information with specific impact on the customer, including the minimum commitment to the Postal Service and the timing and manner in which the Postal Service might change prices under the contract. In addition, certain terms and the prices in the annexes of each agreement will be redacted.

The redactions applied to the financial workpapers for each contract filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product in the CP docket of this filing, will protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the mailing profile of the customer, business information of interested third parties, and cost coverage projections. To the extent practicable, the Postal Service will limit its redactions in the workpapers to the actual information it has determined to be exempt from disclosure under 5 U.S.C. § 552(b). However, in a limited number of cases, narrative passages or notes will be redacted in their entirety due to the practical difficulties of redacting particular words or numbers within the text as presented in a

spreadsheet format, or certain words or numbers in text will be replaced with general terms describing the redacted material.

To the extent that the Postal Service files data in future filings that will show the actual revenue and cost coverage of the customer's completed contract, the Postal Service will redact in its public filing all of the values included that are commercially sensitive information and will also protect any information that identifies the customer from disclosure.

**(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each alleged harm alleged to result from disclosure.**

If the redacted information were to be disclosed publicly, the Postal Service considers that it is quite likely that it and the customer would suffer commercial harm. The information is commercial sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Revealing this information would provide a competitive advantage to competitors of the Postal Service and of the customer. The Postal Service considers that it is highly probable that if this information were made public, such entities would take immediate advantage of it and there is a substantial risk that the Postal Service and the customer would lose business as a result. Additionally, other postal customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service and other businesses could use the information to the information to their advantage in negotiating with the customer. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

The financial workpapers will include specific information such as costs, negotiated prices and pricing structure, assumptions used in developing costs and prices, business information of foreign postal operators, mailer profile information, and projections of variables. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's and the customer's competitors would likely take great advantage of this information. Unlike its competitors, the Postal Service is required to meet the standards of 39 U.S.C. § 3633 with each negotiated agreement that it asks to have added to the competitive products list. Competitors are not so constrained and could use the redacted information to their advantage in gaining customers. The formulas shown in the spreadsheets in their native format provide additional sensitive information. Revealing the Postal Service's profit margin information could also be used by the customer to attempt to renegotiate its own prices.

Information in the financial spreadsheets and any cost, volume and revenue data concerning this agreement filed after the expiration of this contract also consists of sensitive commercial information related to agreements between the Postal Service and interested third parties. Such information would be extremely valuable to competitors of both the Postal Service and third parties. Using detailed information about such agreements, competitors would be able to better understand the counterparty's underlying costs, and identify areas where they could adapt their own operations to be more competitive. In addition, competitors of the counterparty could use such information to their advantage in negotiating the terms of their own agreements with the Postal Service. And competitors of foreign postal operators could use the information



in the financial spreadsheets to understand their nonpublished pricing to better compete against them.

Information in the financial models for a contract filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product may also include sensitive commercial information related to agreements between the Postal Service and PC Postage Providers. Such information would be extremely valuable to competitors of both the Postal Service and the PC Postage Providers. Using detailed information about such an agreement, competitors would be able to better understand the costs of the postage programs used, and identify areas where they could adapt their own operations to be more competitive. In addition, competitors of the PC Postage Providers could use such information to their advantage in negotiating the terms of their own agreements with the Postal Service.

**(5) At least one specific hypothetical, illustrative example of each alleged harm.**

Identified harm: Revealing information that identifies the customer would enable competitors to target the customers for sales and marketing purposes.

Hypothetical: The identity of the customer in a contract filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product is revealed to the public. A competitor's sales representatives contact the Postal Service's customer and offer the customer lower rates or other incentives, taking away the business anticipated by the Postal Service.

Identified harm: Public disclosure of negotiated terms of an agreement filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product

could be used by competitors and potential customers to the detriment of the Postal Service and its customer.

Hypothetical: A competitor obtains a copy of the unredacted version of Customer A's contract and workpapers to the detriment of the Postal Service's customer. Company B discovers proprietary business strategies and changes its business practices to minimize differentiation, identify their key customer base and cause defection of Customer A's customers. Customer A cancels the contract and withdraws their business from the Postal Service. Other companies would then refuse to share critical details of their business or to participate in negotiated prices with the Postal Service, harming the Postal Service's ability to compete in the marketplace for additional volume and revenue.

Also, the competitor could leverage multiple services to offer deeper discounts than provided by the Postal Service's contract as a loss leader, using profits on other products profits to make up for the temporary loss.

Identified harm: Public disclosure of the price formula, underlying cost structure, and information in the financial workpapers relating to a contract filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing package delivery service or its representative obtains a copy of the unredacted version of the financial workpapers for a contract filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product. It analyzes the workpapers to determine what the Postal Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and

contribution to institutional costs. The competing package delivery service then sets its own rates for products similar to what the Postal Service offers its customers under that threshold and markets its ability to guarantee to beat the Postal Service on price for similar delivery services.

Identified harm: Public disclosure of the prices and related terms in a contract filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product would provide potential customers extraordinary negotiating power.

Hypothetical: Customer B obtains a contract showing Customer A's negotiated prices and the underlying workpapers. Customer B can determine that there is additional profit margin between the prices provided to Customer A and the statutory cost coverage that the Postal Service must produce in order for the agreement to be added to the competitive products list. Although Customer B was offered prices identical to Customer A's, Customer B uses the publicly available information to insist that unless the Postal Service offers Customer B even lower prices than Customer A's, Customer B will not use the Postal Service but will give its business to a competitor of the Postal Service.

Alternatively, Customer B attempts to negotiate lower rates only for those destinations for which it believes the Postal Service is the low-cost provider among all service providers. The Postal Service may agree to this demand in order to keep the customer's business overall, which it believes will still satisfy total cost coverage for the agreement. Then, Customer B uses other providers for destinations other than those for which it negotiated lower rates. This impacts the Postal Service's overall projected cost coverage for the agreement. Although the Postal Service can terminate the

contract when it sees that the mailer's practice and projected profile are at variance, the costs associated with establishing the contract, including filing it with the Postal Regulatory Commission, would be sunk costs that would have a negative impact on postal finances.

Identified harm: Public disclosure of the information in a contract filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product and the related financial workpapers would be used by the customer's competitors to its detriment.

Hypothetical: A business in competition with the customer obtains a copy of the unredacted version of the financial workpapers for a contract filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product. The customer's competitor analyzes the workpapers to assess the customer's underlying shipping costs. The customer's competitor uses that information as a baseline to negotiate with shipping companies and other suppliers to develop lower-cost alternatives and thereby to undercut the customer.

Identified harm: Public disclosure of information in a contract filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product and related financial workpapers would be used by the competitors of a foreign postal operator to the detriment of the Postal Service, the counterparty to the agreement and/or the foreign postal operator.

Hypothetical: A firm competing with a foreign postal operator obtains a copy of the unredacted version of a contract filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product and related financial workpapers from

the Commission's website. The firm uses the information to assess the business information concerning the foreign postal operator in the contract and financial workpapers, and thereby develop benchmarks for competitive alternatives. In addition, disclosure of such information could provide leverage to other parties in their negotiations with the Postal Service concerning financial arrangements that they may make with the Postal Service in the future.

Identified harm: Public disclosure of any cost, volume and revenue data concerning an agreement filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product that the Commission may require the Postal Service to file after the contract's expiration would give competitors a marketing advantage.

Hypothetical: A competitor could use any cost, volume and revenue data associated with an agreement filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product, which the Commission may require the Postal Service to file in these dockets after the contract's expiration, to "qualify" potential customers. The competitor might focus its marketing efforts only on customers that have a certain mailing profile, and use information filed after the contract's expiration to determine whether a customer met that profile.

Identified harm: Public disclosure of information in any contract involving postage payment through a PC Postage Provider, and of related information in financial workpapers for that contract, would be used by the competitors of the PC Postage Provider to the Postal Service and/or the PC Postage Provider's detriment.

Hypothetical: A firm competing with the customer's PC Postage Provider (if applicable) obtains a copy of the unredacted version of a contract involving postage payment through a PC Postage Provider, and financial workpapers, from the Commission's website. The firm uses the information to assess the PC Postage Provider's revenue sources and growth opportunities, and thereby develop benchmarks for competitive alternatives. In addition, disclosure of such information could provide leverage to other PC Postage Providers in their negotiations with the Postal Service concerning financial arrangements that PC Postage Providers make with the Postal Service in the future.

**(6) The extent of the protection from public disclosure alleged to be necessary.**

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for parcel and expedited services, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar products should not be provided access to the non-public materials.

**(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof.**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. 39 C.F.R. § 3011.401(a). However, because the Postal Service's relationships with customers often continue beyond ten years or decades, the Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3011.401(b-c).

**(8) Any other relevant factors or reasons to support the application.**

None.

***Conclusion***

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.



**DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR DOMESTIC COMPETITIVE AGREEMENTS, OUTBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, INBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, AND OTHER NON-PUBLISHED COMPETITIVE RATES (GOVERNORS' DECISION NO. 19-1)**

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February 7, 2019

**STATEMENT OF EXPLANATION AND JUSTIFICATION**

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices not of general applicability for certain of the Postal Service's competitive service offerings, and such changes in classification as are necessary to implement the new prices.

This decision establishes new prices for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates. Domestic Competitive Agreements consist of negotiated service agreements with Postal Service customers for domestic services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Outbound International Competitive Agreements consist of negotiated service agreements with Postal Service customers for outbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Inbound International Competitive Agreements consist of negotiated service agreements with foreign postal operators or other entities for inbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Other Non-Published Competitive Rates consist of rates not of general applicability that are not embodied in contractual instruments.

With respect to any product within the above categories, management is hereby authorized to prepare any necessary product description, including text for inclusion in the Mail Classification Schedule, and to make all necessary regulatory filings with the Postal



Regulatory Commission. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

The Postal Accountability and Enhancement Act (PAEA) requires that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. For agreements subject to this Decision, there are hereby established prices that will enable each agreement to cover at least 100 percent of the attributable costs for the relevant product and that conform in all other respects to 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. As discussed in the accompanying management analysis, the Chief Financial Officer (or his delegate(s)) shall certify that all cost inputs have been correctly identified for prices subject to this Decision and that all prices subject to this Decision conform to this Decision and to the requirements of the PAEA.

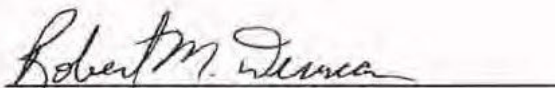
No agreement, grouping of functionally equivalent agreements, or other classification authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 U.S.C. § 3632(b)(3). On a semi-annual basis, management shall furnish the Governors with a report on all non-published rate and classification initiatives, as specified in the accompanying Management Analysis. Not less than once each year, the Governors shall review the basis for this Decision and make such further determination as they may deem necessary. This Decision does not affect postal management's obligation to furnish to the Board of Governors information regarding any significant new program, policy, major modification, or initiative, or any other matter under 39 C.F.R. § 3.7(d), including where such a matter also falls within the scope of this Decision.

This Decision supersedes previous Governors' Decisions setting classifications and rates not of general applicability for competitive products; however, prices and classifications established under those Decisions may continue to be offered until the expiration of their terms, and contractual option periods and extension provisions that are included in the existing and future agreements can continue to be exercised.

## ORDER

In accordance with the foregoing Decision of the Governors, the new prices and terms set forth herein for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates and the changes in classification necessary to implement those prices, are hereby approved and ordered into effect. An agreement or other nonpublished rate and classification initiative is authorized under this Decision only if the prices fall within this Decision and the certification process specified herein is followed. Prices and classification changes established pursuant to this Decision will take effect after filing with and completion of any necessary review by the Postal Regulatory Commission.

By The Governors:

A handwritten signature in cursive script, appearing to read "Robert M. Duncan", is written over a horizontal line.

Robert M. Duncan

Chairman, Board of Governors



## Attachment A

### **Management Analysis of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates**

This analysis concerns the inbound competitive prices and classifications in the Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (collectively, "competitive instruments"). Competitive instruments are often negotiated with customers and foreign postal operators for better cost coverage, higher overall contribution, and improved service with respect to postal services classified as competitive. They may also arise from other sources, such as the Universal Postal Convention.

The cost coverage for each competitive agreement or grouping of functionally equivalent instruments (collectively, each "product") will be [REDACTED]

[REDACTED]

The cost coverage for a product equals [REDACTED]

[REDACTED]

Each competitive instrument may have multiple price categories and negotiated components. Examples of such categories or components would be Priority Mail, Priority Mail Express, Parcel Return Service, Parcel Select, First-Class Package Service, First Class Package International Service, Commercial ePacket Service, Priority Mail International, Priority Mail Express International, International Priority Airmail, International Surface Air Lift, Inbound Parcel Post, Inbound Direct Entry, and Inbound EMS services. These or other categories may include other services that the relevant customer or foreign postal operator offers to its customers under differing terms, but that nevertheless are processed and delivered in the same manner within the United States Postal Service's network. Such instruments may also establish negotiated rates for services ancillary to such items and for customized competitive services developed for application solely in the context of the agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Prices

established by these formulas should not interfere with competitive products' ability as a whole to comply with 39 U.S.C. §3633(a)(3), which, as implemented by 39 C.F.R. § 3015.7(c), requires competitive products to contribute a minimum percentage to the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise from 39 U.S.C. §3633(a)(1).

The Postal Service shall submit a semi-annual report to the Governors. The report shall include information on the cost coverage for each agreement or initiative that has been executed under the authority of Governors' Decision 19-1. Agreements classified as non-published rates or rate ranges may be reported as a collective grouping; all other agreements or initiatives are to be reported separately. The report shall also include cost coverage information on any agreements and nonpublished initiatives established under previous numbered Governors' Decisions and Resolutions.

**UNITED STATES POSTAL SERVICE  
OFFICE OF THE BOARD OF GOVERNORS  
CERTIFICATION OF GOVERNORS' VOTE ON  
GOVERNORS' DECISION NO. 19-1**

Consistent with 39 USC 3632(a), I hereby certify that the following Governors voted in favor of Governors' Decision No. 19-1:

Robert M. Duncan  
David C. Williams



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Michael J. Elston  
Secretary of the Board of Governors (A)

7 February 2019

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Date

## **PART B—COMPETITIVE PRODUCTS 2000 COMPETITIVE PRODUCT LIST**

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### **NEGOTIATED SERVICE AGREEMENTS International**

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#### **2510.22 International Competitive Multi-Service Commercial Contracts**

These contracts provide incentives to the contractholder as mailer for any combination of:

- Global Express Guaranteed (GXG)(2315),
- Priority Mail Express International (PMEI) (2305),
- Outbound Priority Mail International (PMI) (2315),
- Outbound Single-Piece First-Class Package International Service (FCPIS)(2335),
- International Priority Airmail (IPA)(2320),
- International Surface Air Lift (ISAL)(2325),
- Commercial ePacket (CeP), or
- Destination Country Duty and Taxes Chargeback Service.

CeP is a commercial service designed for volume shipments of outbound international letter post packet items (destined for delivery to certain destinations outside of the United States). Individual item tracking is provided. CeP pieces are sealed against inspection and shall not be opened except as authorized by law. CeP pieces that are undeliverable-as-addressed are entitled to be forwarded or returned to the sender. Size and weight limitations for CeP are the same as for International Priority Airmail Packages (Small Packets) and Rolls (2320.2).

For certain destinations for which the Postal Service has made arrangements with the destination country postal operator or supplier, as an optional feature, the Postal Service may offer destination country duty and taxes chargeback service, through which custom duties and taxes are paid by the mailer in lieu of the recipient.

In addition to offering these contracts directly to contract holders for the contract holder's volume, these contracts may also provide incentives to the contract holder as reseller for PMEI (2305), PMI (2315), and/or FCPIS (2335). The contract holder as reseller offers prices based on its contract to its customers (reseller's customers), which may include some specific criteria for payment, preparation, and tender.



**Current Procedures for a Domestic-NSA-Like Filing;  
Proposed Procedures for the International Competitive Multi-Service Commercial Contracts 1 product**

<b>Current Tasks for Domestic-NSA-like Filing</b>	<b>Task Completed by</b>	<b>Task Could be Eliminated or Simplified, as follows</b>	<b>Tasks that would remain with International Competitive Multi-Service Commercial Contracts 1 Product</b>	<b>Task to be Completed by</b>
Initial Filing, Non-Public, Prepare Cover Page	USPS Office of General Counsel		Initial Filing, Non-Public, Prepare Cover Page	USPS Office of General Counsel
Initial Filing, Non-Public, Prepare Unredacted Governors' Decision No. 19-1	USPS Office of General Counsel	Would be eliminated; would be filed with the request to establish the ICMSC Contract product (Initial Notice) and only updated if a replacement decision is issued	File replacement unredacted Governors' Decision only if needed.	
Initial Filing, Non-Public, Prepare Unredacted Agreement	USPS Office of General Counsel		Initial Filing, Non-Public, Prepare Unredacted Agreement	USPS Office of General Counsel
Initial Filing, Non-Public, Prepare Unredacted Financial Workpapers	USPS Pricing Innovation		Initial Filing, Non-Public, Prepare Unredacted Financial Workpapers	USPS Pricing Innovation
Initial Filing, Request PRC Docket Number from PRC Dockets Section	USPS Office of General Counsel and PRC Dockets Section	Would be eliminated as multiple agreements could be filed in docket number established for ICMSC Contract product		
Initial Filing, Public, Prepare Notice	USPS Office of General Counsel	Cover pleading would be further simplified by reducing overall explanation, as it would be understood to part of an existing docket	Initial Filing, Public, Prepare Notice	USPS Office of General Counsel
Initial Filing, Prepare Attachment A, Redacted Governors' Decision	USPS Office of General Counsel	Would be eliminated as redacted Governors' decision would be filed with Initial Notice in docket and would only be needed subsequently if a replacement decision is issued	File replacement redacted Governors' Decision only if needed.	



Current Tasks for Domestic-NSA-like Filing	Task Completed by	Task Could be Eliminated or Simplified, as follows	Tasks that would remain with International Competitive Multi-Service Commercial Contracts 1 Product	Task to be Completed by
Initial Filing, Prepare Attachment B, Redacted Agreement	USPS Office of General Counsel		Initial Filing, Prepare Attachment B, Redacted Agreement	USPS Office of General Counsel
Initial Filing, Prepare Attachment C, Prepare Draft Mail Classification Schedule Section	USPS Office of General Counsel	Would be eliminated. Draft MCS section with "menu" of possible products and services to be included within agreements filed in the ICMSC docket would be filed with the Initial Notice. That MCS section would be updated only as needed through filings in MC docket numbers assigned to the ICMSC product.	Draft MCS would be refiled only as needed (i.e., when there is a material MCS change)	
Initial Filing, Prepare Attachment D, Statement of Supporting Justification	USPS Office of General Counsel, also requires review and approval by Manager, International Products & Major Accounts, prior to each filing	Would be eliminated. Statement of Supporting would be filed with Initial Notice, and could be updated only as needed whenever a material change to the menu is filed.	Updates to Statement of Supporting Justification filed only as needed (i.e., when there is a material MCS change)	
Initial Filing, Prepare Attachment E, Certification	USPS Office of General Counsel, but must be signed by Certifying Official		Initial Filing, Prepare Attachment E, Certification	USPS Office of General Counsel, but must be signed by Certifying Official
Initial Filing, Attachment F, Application for Non-Public Treatment	USPS Office of General Counsel	Would be eliminated. Application for Non-Public Treatment would be filed with Initial Notice, and only updated as needed.	Updates to application for nonpublic treatment only as needed.	

Current Tasks for Domestic-NSA-like Filing	Task Completed by	Task Could be Eliminated or Simplified, as follows	Tasks that would remain with International Competitive Multi-Service Commercial Contracts 1 Product	Task to be Completed by
Initial Filing, Public, Prepare Redacted Financial Workpapers	USPS Pricing Innovation		Initial Filing, Non-Public, Prepare Redacted Financial Workpapers	USPS Pricing Innovation
Initial Filing, Federal Register notice	USPS Office of General Counsel	Would be eliminated. Only one Federal Register notice concerning the Initial Notice would be filed at initiation of docket.		
PRC Dockets section processes non-public and public filing	PRC	Fewer documents in initial filing would reduce PRC workload		
PRC Issues Notice Establishing Docket, Appointing Public Representative (PR), and Setting Forth Procedural Schedule	PRC	Would be eliminated. In response to Initial Request, PRC would issue and publish a notice establishing docket, appointing Public Representative(s), and setting forth timetable for review of any new contracts in the docket. PRC would only update as needed, for instance, to assign a new PR	PRC Issues Notices, from time to time, appointing Public Representative(s) to monitor the ICMSC Contract product docket; would also issue notice in Federal Register when a material classification change is made to the "menu"	PRC
Public Representative prepares and files Comments within prescribed window after filing of an agreement	Public Representative (member of PRC staff)	Routine comments by PR could be eliminated	Public Representative prepares and files comments only when Public Representative has specific, non-routine, comments	Public Representative (member of PRC staff)
PRC either stops the clock through issuance of an order, or takes no action, within prescribed window after the filing of an agreement	PRC	Routine orders on contracts eliminated; only orders stopping clock require PRC order.	Only if necessary, PRC prepares and issues order	PRC
USPS files notice of effective date, if necessary	USPS Office of General Counsel		USPS files notice of effective date, if not already specified in the contract	USPS Office of General Counsel

**Certification of Prices for  
International Competitive Multi-Service Commercial Contracts 1  
Contract with Serial Number [     ]**

I, Nan K. McKenzie, Manager, Pricing Innovation, Finance Department, United States Postal Service, am familiar with the prices and terms for International Competitive Multi-Service Commercial Contracts 1 Contract with Serial Number [     ]. The prices and terms contained in this contract were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, adopted February 7, 2019 (Governors' Decision No. 19-1).

I hereby certify, based on the financial analysis provided herewith, that the prices are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). They are expected to cover attributable costs. There should therefore be no subsidization of competitive products by market dominant products. This contract should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

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Nan K. McKenzie

## Statement of Supporting Justification

I, Frank Cebello, Manager, International Products & Major Accounts, am sponsoring this request that the Postal Regulatory Commission (Commission) add the International Competitive Multi-Service Commercial Contracts 1 product to the list of competitive products. This statement supports the United States Postal Service's (Postal Service's) request by providing the information required by each applicable subsection of 39 C.F.R. § 3040.132. I attest to the accuracy of the information contained herein.

- (a) *Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.*

As demonstrated below, the change complies with the applicable statutory provisions.

- (b) *Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. § 3622(d), and that it advances the objectives of 39 U.S.C. § 3622(b), taking into account the factors of 39 U.S.C. § 3622(c).*

Not applicable. The Postal Service is proposing that this International Competitive Multi-Service Commercial Contracts 1 product be added to the competitive products list.

- (c) *Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. § 3633.*

The service to be provided under the contract will cover its attributable costs and make a positive contribution to competitive products' ability collectively to meet the required minimum contribution requirement under Section



3633(a)(3). The contract will increase contribution toward competitive products' currently required minimum contribution of the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises (39 U.S.C. § 3633(a)(1)).

- (d) *Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.*

A contract filed for inclusion in the International Competitive Multi-Service Commercial Contracts 1 product will set specific terms and conditions for providing to the customer Global Express Guaranteed (GXG), Priority Mail Express International (PMEI), Priority Mail International (PMI), First-Class Package International Service (FCPIS), International Priority Airmail (IPA), International Surface Air Lift (ISAL), Commercial ePacket (CeP), and/or Destination Country Duty and Taxes Chargeback Service. GXG, PMEI, PMI, and FCPIS, IPA, ISAL, CeP, as well as Destination Country Duty and Taxes Chargeback Service are provided in a highly competitive market. The Postal Service is unable to set prices substantially above costs, raise prices significantly, decrease quality, or decrease output, without losing this business to private competitors in the expedited shipping market.

In negotiating this contract, the Postal Service's bargaining position was constrained by the existence of other providers of services similar to the Postal

Service's. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. The Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar delivery services. The market does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the contract is premised on prices and terms that provide sufficient incentive for the customer to ship with the Postal Service rather than a competitor.

- (e) *Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. § 1696, subject to the exceptions set forth in 39 U.S.C. § 601.*

GXG, PMEI, PMI, FCPIS, CEP, as well as Destination Country Duty and Taxes Chargeback Service are services intended primarily for merchandise, and any letters contained in these items would be covered by one or more exceptions or suspensions to the Private Express Statutes. A large portion of IPA and ISAL are also intended for merchandise, and any letters contained in these items would be covered by one or more exceptions or suspensions to the Private Express Statutes

- (f) *Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.*

See part (d) above. Shipping similar to PMEI, FCPIS, IPA, ISAL, CEP, as well as Destination Country Duty and Taxes Chargeback Service are widely available from well-known and successful private firms at both published and contract prices.

- (g) *Provide any available information on the views of those who use the product on the appropriateness of the proposed modification.*

We naturally expect that the customer would support the addition of the contract to the product list so that the contractual terms can be effectuated more rapidly with greater speed.

- (h) *Provide a description of the likely impact of the proposed modification on small business concerns.*

The market for similar delivery services is highly competitive and requires substantial infrastructure to support a national network. Large shipping companies serve this market. The Postal Service is unaware of any small business concerns that could offer comparable service for this customer.

- (i) *Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.*

The Postal Service will continue to file each customized agreement with supporting financial information and certifications. The Commission and participants will have every opportunity to review each agreement in advance. The changes to the filing practices in this docket are intended to reduce unnecessary and repetitive practices by consolidating customized agreements into a single docket and thereby improve cycle time.